

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 78 - HB 68

March 27, 2015

CORRECTED SUMMARY OF BILL: Authorizes the Director of the Board of Licensing Contractors (BLC) to issue citations against contractors and subcontractors in violation of entering into a contract in which the monetary limit exceeds the limit allowed per the individual's specific license classification or acting in the capacity of or engaging in the business of a contractor in a classification in which the person is not licensed. Increases the maximum allowable fine, from \$500 to \$1,000 that may be assessed against a home improvement contractor, in conjunction with a violation resulting in a contractor's suspension, revocation, or failure to obtain initial or renewal licensure, and increases the maximum fine for citations issued for unlicensed activity against a home improvement contractor, from \$250 to \$1,000.

ESTIMATED FISCAL IMPACT:

On March 3, 2015, a fiscal note was issued estimating a fiscal impact as follows:

Other Fiscal Impact - The BLC does not currently levy civil penalties against licensees. It is unknown how many civil penalties the BLC will levy as a result of the proposed bill. If the maximum allowable penalty is assessed against violators, civil penalty revenue to the BLC could increase to a maximum range of \$62,500 to \$93,750.

Due to additional information provided by the Department of Commerce and Insurance regarding the current citation process used by the Board of Licensing Contractors and further review of the bill, this impact was determined to be in error. Based upon such additional information the estimated impact is:

(CORRECTED)

Increase State Revenue – Less Than \$10,100/Board of Licensing Contractors

Decrease State Expenditures - \$10,000/Board of Licensing Contractors

Corrected Assumptions:

- Pursuant to Tenn. Code Ann. §62-6-517, the executive director of the BLC may issue a citation against a person acting in the capacity of or engaging in the business of home improvement without a license.

SB 78 - HB 68 (CORRECTED)

- Any citation issued to a home improvement contractor may be appealed by the contractor within 15 business days after the service of the citation.
- An appellant will be provided a Uniform Administrative Procedures Act (UAPA) hearing with a final order to be held to collect any citation issued. Within recent years, the board has forgone citations and assessed civil penalties through the complaint process.
- This legislation allows a citation to be issued against any unappealed citation, or collection of the civil penalty.
- This will likely reduce UAPA hearings, thus reducing expenditures associated with those hearings.
- Based on information provided by TDCI, in FY13-14, there were approximately 125 instances of unlicensed activity cases.
- In FY13-14, the BLC heard 18 cases for unlicensed activity which cost the Board, on average \$930 per UAPA hearing or \$16,740 total (18 x \$930). The BLC estimates that approximately 60 percent (0.60) of these costs will now be avoided by reducing UAPA hearings, thus reducing Board expenditures by \$10,044 (\$16,740 x 0.60).
- In FY13-14, there were 107 (125 - 18) unappealed citations pursuant to violations of unlicensed activity.
- The number and monetary amount of citations and civil penalties levied against home improvement contractors is not static, or is unable to be reasonably determined, as the Commissioner is authorized to waive any violations regarding unlicensed activity, and is authorized to determine the severity of the citation or penalty on a case-by-case basis, pursuant to Tenn. Code. Ann. § 62-6-517.
- Given the uncertainty of the actual number of citations and civil penalties that will be levied by the BLC for violations of unlicensed activity, it is conservatively estimated this legislation will result in 27 additional citations (107 unappealed citations x 25%).
- The provisions of the bill increase the maximum civil penalty against home improvement contractors in violation of unlicensed activity, from \$250 to \$1,000. Based on information provided by the department, the full increase will not be issued in the majority of cases. It is assumed that at most, the increase penalty will average one-half, \$375, of the total proposed increase [(\$1,000 - \$250) / 2].
- This bill is estimated to result in an increase in citation revenue of less than \$10,125 (\$375 x 27 cases) annually.
- Authorizing unappealed citations to be issued judgment and order will likely reduce the need for the BLC to, through the complaint process, issue civil penalties in lieu of citations, thus, reducing the number of civil penalties issued against home improvement contractors. Any reduction in the number of civil penalties is estimated to be offset by the increase in the maximum civil penalty per violation.
- Pursuant to Tenn. Code Ann. § 4-29-121, all regulatory boards are required to be self-supporting over any two-year period.
- The Board for Licensing Contractors had an annual surplus of \$384,805 in FY12-13, an annual surplus of \$553,645 in FY13-14, and a cumulative reserve balance of \$3,521,368 on June 30, 2014.

IMPACT TO COMMERCE:

(CORRECTED)

Increase Business Expenditures – Less Than \$10,100

Corrected Assumption:

- Levying fees against licensees regulated by the BLC will increase non-deductible business expenses incurred by such licensees estimated to be less than \$10,125.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink, appearing to read "Jeffrey L. Spalding", written in a cursive style.

Jeffrey L. Spalding, Executive Director

/jdb